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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,423	03/30/2001	Michael A. Popp	SSM488US	1226

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EXAMINER

MANOHARAN, VIRGINIA

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,423

Applicant(s)

POPP ET AL.

Examiner

Virginia Manoharan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-14,16-19,22,27,30-32 and 35-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-14, 16-19, 22, 27, 30-32 and 35-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1, 4-14, 16-19, 22, 27, 30-32 & 35-50 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling.

The means and process of maintaining the ratio of the more volatile to the less volatile constituent or solvent comprised in the solution to be concentrated constant appears to be critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). [See page 4 of the present specification and applicants' remarks made at page 11, first paragraph, dated August 17, 2004. That is applicants state that "the ability to keep the ratio of the more volatile to the less volatile constituents or solvents comprised in the solution to be concentrated constant is a core feature and essential to the present invention. This ability permits an operator to lesson (sic) and change in character or concentration of the active ingredients during removal of solvents therefrom. This feature also establishes novelty and an inventive step over the prior art as shall be discussed below.."] Underlinings supplied.

Claims 1, 7, 13, 16, 17, 32 & 31 are objected to because of the following informalities:

(a) The inconsistent used of terminology in the claims is improper. For examples only:

(1) "distillate" in claim 13 as opposed to "condensate" in claim 1;

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(2) "is fed" in claim 7, line 2 and claim 32, as opposed to "recycled" in claim 1; and

(3) steps" in claim 16, line 2 as opposed to stages – in claim 14.

(b) The used of a slash such as water /alcohol in claim 17 is improper. See also claim 41.

Claims 1, 4-14, 16-19, 22, 27, 30-32 & 33-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(a) In claim 1, the recitation of "the condenser is positioned in such a way" appears to be at odds or at least broadening the initially recited "condenser downstream of said vapor concentration means..". Also, " the way" has not been defined.

(b) Claim 22 is already in claim 1, claimed twice?

(c) The following claimed languages lack antecedent supports as they were not initially recited in the base claim from which they depend respectively.

(1) "before being recycled to the evaporator" in claim 1, e);

(2) "components entrained by the overhead product during flash evaporation "in claim 13; and

(3) the process step of claim 18, and the feature recited in claim 30;

(d) It is unclear how the bottom product is formed from the condensate as recited in claim 14.

(e) The claim or at least part of the claims does not recite positive, structural element(s) of an apparatus. See e.g., the “wherein” clause in claim 1, e),.

(f) Claim 42 appears to be at odds with the claim from which it depends i.e., claim 14. Claim 14 recites that “the bottom product is used as a heat carrier liquid for the condensation stages, whereas claim 42 recites ..” the bottoms product is distilled by flash evaporation which is inconsistent therewith. See also claims 43-44. [A dependent claim incorporates every features of the claim from which it depend and cannot change or replace the limitations already recited in the independent claim].

(g) Claim 18 is the same as claim 42.

(i) The preamble of claim 50 recites “A process for concentrating a plant extract in form of an aqueous alcoholic solution, however the body of the claim does not mention the concentrating of the extract. The same holds true for the preamble in claim 14.

Claims 1-4, 14, 16-19, 22, 27, 30-32 and 35-50 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is (571) 272-1450.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola, can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

V. Manoharan/af
July 5, 2005


VIRGINIA MANOHARAN
PRIMARY EXAMINER
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